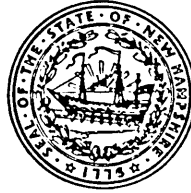


THE STATE OF NEW HAMPSHIRE

ATTORNEY GENERAL
GREGORY H. SMITH

DEPUTY ATTORNEY GENERAL
PETER W. MOSSEAU

ASSISTANT ATTORNEYS GENERAL
JOHN T. PAPPAS
ANNE R. CLARKE
MARC R. SCHEER
DONALD J. PERRAULT
MARTIN R. JENKINS
BETSY S. WESTGATE
EDWARD L. CROSS, JR.
PETER C. SCOTT
MICHAEL A. PIGNATELLI
BRIAN T. TUCKER
PAUL BARBADORO
BRUCE E. MOHL



THE ATTORNEY GENERAL

STATE HOUSE ANNEX
25 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

November 9, 1983

83-145-I
(Clarification)

ASSISTANT ATTORNEYS GENERAL
JOHN A. MALMBERG
DOUGLAS L. PATCH
LORETTA S. PLATT
ROBERT P. CHENEY, JR.
LESLIE J. LUDTKE
ANDREW L. ISAAC
RONALD F. RODGERS
G. DANA BISBEE
PETER T. FOLEY
STEVEN M. HOURAN
JEFFREY R. HOWARD
EVE H. OYER
GREGORY W. SWOPE

ATTORNEYS
DANIEL J. MULLEN
JAMES D. CAHILL, III
EDNA M. CONWAY
AMY L. IGNATIUS
T. DAVID FLOURDE

Dr. Ronald L. Powell, Commissioner-Designate
New Hampshire Department of Corrections
c/o New Hampshire Hospital
105 Pleasant Street
Concord, New Hampshire 03301

Re: November 7, 1983 Opinion re: Juvenile Probation

Dear Dr. Powell:

After issuing our opinion of November 7, 1983 concerning juvenile probation, two relevant provisions contained in the new Division of Children and Youth Services Act (Chapter 416 Laws of 1983) were brought to our attention. While some discussion of those provisions is necessary for clarification, our analysis of them does not lead us to change the conclusion reached in our earlier letter.

The first of the two relevant provisions is contained in Section 1 of the Division of Children and Youth Services Act. That section, to be codified as RSA 170-G:4 II, provides: "The division shall have the power and duty to: ... Provide services for all children and youth referred to it by the district court pursuant to RSA 169-B." That section will take effect as soon as the Division of Children and Youth Services is established and operating under the law. The second of the two relevant provisions is contained in Section 38 of the Act. That section, effective January 1, 1985, amends the provision cited above so that RSA 170-G:4 II will read: "The division shall have the power and duty to: ... Provide services for all children and youth referred to it by the probate and district courts pursuant to 169-B; 169-C; 169-D, 170-B; 170-C; and 463 and for all children and youth who are at risk of placement with the divisions."



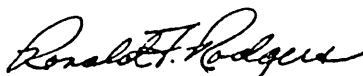
Dr. Ronald L. Powell
November 9, 1983
Page 2

Both of the cited sections are relevant to juvenile probation because RSA 169-B:19, I (d) authorizes the district courts to place delinquent minors on probation. As discussed in our earlier letter, the court is authorized by that section to place a minor on probation by referring that minor to the supervision of a "probation officer or volunteer counselor, as authorized by RSA 504:19 ..." RSA 169-B:2 V (c) (defining "probation"). The court is not authorized to refer a minor for probation supervision to the Division of Children and Youth Services or to any of the existing agencies that will be part of that Division. Because the new probation-parole officers of the Division of Field Services in the Department of Corrections are granted all of the functions, duties, and responsibilities of the existing state probation officers, the courts will have the authority to refer minor probationers to them.

Those sections cannot be read as grants of power to the Division of Children and Youth Services because they only require the Division to provide services to youths referred to it under RSA 169-B. It does not increase the categories of children that may be referred to the Division, and it does not require the Division to provide services to any children who are not referred to it. The new Act does not contain any provision that grants the Division the authority to supervise minors on probation. The amendment to RSA 170-G:4, II, cited above, effective January 1, 1985, contains the same relevant language and has the same effect as the original section. Thus, our conclusion remains the same for the period after January 1, 1985: the Division of Field Services in the Department of Corrections and the Municipal Probation Officers authorized by RSA 504:13 will continue to have the duty and authority to supervise minors placed on probation. Of course, the legislature is free to transfer the probation responsibilities for minors to the Division of Children and Youth Services.

I trust that this is responsive to your inquiry and will serve to clarify our opinion of November 7, 1983. If any questions remain please do not hesitate to contact me.

Very truly yours,



Ronald F. Rodgers
Assistant Attorney General
Division of Legal Counsel

RFR:alh
83-145-I

cc: Mr. David Bundy, Director
of Children and Youth Services